



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-1132]

RIN 1625-AA09

Drawbridge Operation Regulation; Long Island, New York  
Inland Waterway from East Rockaway Inlet to Shinnecock  
Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the Smith Point Bridge, mile 6.1, across Narrow Bay, between Smith Point and Fire Island, New York. This temporary final rule is necessary to facilitate the completion of a major bridge rehabilitation project.

DATES: This temporary final rule is effective from [insert date of publication], through May 25, 2012. The rule has been enforced with actual notice since December 22, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2011-1132 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1132 in the

"Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212-668-7165, [judy.k.leung-yee@uscg.mil](mailto:judy.k.leung-yee@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)).

This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds

that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest to give prior notice and opportunity for comment. As is more fully discussed below, the rehabilitation work has already begun on this bridge under a temporary deviation published on September 30, 2011, (76 FR 60733) and that work was unexpectedly delayed. This rule provides a time extension so that the rehabilitation can be completed in the shortest possible time frame. Without this rule the work would have to be suspended thereby delaying the ultimate completion date. Further, as stated in the temporary deviation this waterway is used primarily by recreational boaters who can safely pass through the reduced horizontal clearance caused by this rule, the majority of whom do not operate during the months when this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register for the reasons stated above.

#### Basis and Purpose

The Smith Point Bridge across Narrow Bay, mile 6.1, between Smith Point and Fire Island, New York, has a

vertical clearance in the closed position of 16 feet at mean high water and 18 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(d).

The waterway users are predominantly recreational vessels of various sizes.

On September 30, 2011, the Coast Guard published a temporary deviation (76 FR 60733) from the regulations allowing single span bridge openings from September 26, 2011 through December 21, 2011, in order to facilitate bridge rehabilitation construction at Smith Point Bridge. Under the temporary deviation the bridge was allowed to open only one of the two moveable spans for the passage of vessels from September 26, 2011, through December 21, 2011.

The bridge owner, Suffolk County Department of Public Works, recently advised the Coast Guard that the cleaning and painting operations delayed the structural steel repairs and requested an extension of 156 days to complete the rehabilitation project necessary to allow the bridge to return to its full two span operation. The Coast Guard expects minimal marine traffic transit through this bridge during the proposed effective dates of this rule, and all vessels known to use this waterway can pass through the bridge with a single span opening.

As a result, the Coast Guard is publishing this temporary final rule to help facilitate completion of the bridge rehabilitation before the 2012 boating season begins.

#### Discussion of rule

The Coast Guard is publishing this temporary final rule, extending single span openings from December 22, 2011 through May 25, 2012, to help facilitate completion of bridge rehabilitation repairs. The rehabilitation repairs must be completed before the bridge can open both spans for the passage of vessel traffic for the 2012 boating season.

The main navigation channel provides 55 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

During this temporary final rule the main channel will provide 27.5 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

The Coast Guard believes that this temporary final rule should meet the reasonable needs of navigation because the vessels that normally use this bridge are recreational vessels that can safely pass through a 27.5 foot horizontal clearance due to their relative small size. In addition, most of the above recreational vessels do not operate during the months when this rule will be in effect.

### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons. The bridge presently cannot open two spans for vessel traffic due to the fact that rehabilitation repairs have not been completed. This action will facilitate completion of the bridge repairs. Most vessel traffic that uses this waterway can fit through the bridge with a single span opening.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the bridge that cannot transit through a 27.5 foot horizontal clearance. The bridge presently cannot open two spans for the passage of vessel traffic because the rehabilitation repairs are not completed. This action will facilitate completion of the bridge repairs. Most vessel traffic that uses this waterway can fit through the bridge with a single span opening.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule

would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,



the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a

significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In Sec. 117.799, paragraph (d) is suspended and paragraph (k) is added to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal

\* \* \* \* \*

(k) The draws of the West Bay Bridge, mile 0.0, across Quantuck Canal, Beach Lane Bridge, mile 1.1, across Quantuck Canal, and the Quoque Bridge, mile 1.1, across

Quoque Canal, shall open on signal from October 1 through April 30 from 8 a.m. to 4 p.m. and from May 1 through September 30, from 6 a.m. to 10 p.m. The draw of the Smith Point Bridge, mile 6.1, across Narrow Bay, need open only one of the two movable spans for the passage of vessel traffic from December 22, 2011 through May 25, 2012. The draw shall open on signal from December 22 through April 30 from 8 a.m. to 4 p.m. and from May 1 through May 25, 6 a.m. through 10 p.m. At all other times during these periods, the draws shall open as soon as possible but no more than one hour after a request to open is received.

Dated: December 21, 2011

James B. McPherson  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

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